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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/970,394	10/03/2001	Mark David Hubbard	HENTE-061B	3304
7663	7590	10/07/2003	EXAMINER	
STETINA BRUNDA GARRED & BRUCKER 75 ENTERPRISE, SUITE 250 ALISO VIEJO, CA 92656			HOOK, JAMES F	
			ART UNIT	PAPER NUMBER

3752

DATE MAILED: 10/07/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/970,394

Applicant(s)

HUBBARD ET AL.

Examiner

James F. Hook

Art Unit

3752

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-9, 17-20 and 22-24 is/are allowed.
- 6) ☒ Claim(s) 10 and 21 is/are rejected.
- 7) ☒ Claim(s) 11-16 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

Claim 21 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 21 is dependent upon claim 48 which does not exist in the case. Because it cannot be assumed what claim applicant intended the claim depend from, the claim is therefore indefinite where the scope cannot be determined when it is not known what claim it is to depend from. However, if the claim is made dependent on any allowed claim it will be considered allowable, and if it is made dependent upon an objected claim it also will be considered objected to, however, if it is made dependent upon the rejected claim, it may be subject to rejection if such is not placed in condition for allowance in the next applicant response.

It should also be noted that claim 1, line 8, there is no antecedent basis for the term "the strap" prior to it's use in the claim. It is noted that the strap is not positively recited until claim 2, so it appears as if "the strap" in claim 1 should be changed to "the support" to give it proper antecedent basis, however, based upon the application as a whole it is understood what is meant by the strap even though it lacks antecedent basis in claim 1.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

Art Unit: 3752

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 10 is rejected under 35 U.S.C. 102(b) as being anticipated by Hickey. The patent to Hickey discloses the recited device for use with a pipe having a distal end with an opening it is considered merely intended use to use the pipe for fluid and does not change the structure of the article of claim 10, the device comprising a strip material 142 having a length sufficient to extend between two building supports, apertures 54,56,57 can be used for fasteners to fasten the strip to supports, the strip material having a plurality of arcuate slots formed in the member to make knock out portions 146,147 as seen in figure 15 which are seen to be concentric with the center pipe hole 148.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dougherty in view of Hickey. The patent to Dougherty discloses the recited device for use with a pipe having a distal end with an opening through which water flows during use of the pipe comprising a strip of material 2 having a length sufficient to extend between two building studs 3, apertures 20a,22a for receiving fasteners to attach the strip to the studs, and a plurality of holes 10 for receiving pipes. The patent to

Art Unit: 3752

Dougherty discloses all of the recited structure with the exception of forming concentric slots around the holes. The patent to Hickey discloses the structure set forth above. It would have been obvious to one skilled in the art to modify the plurality of holes in Dougherty by providing at least two concentric slots concentric with the holes to allow for sections to be knocked out to accommodate different diameter pipes as suggested by Hickey.

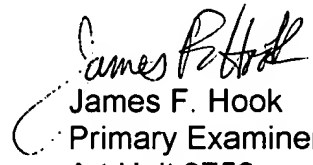
Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The patents to Hertensteiner, McCahill, Mayo, Tortorice, Mailander, Lane, Collins, Cloninger, Saraceno, Jr., Donoho, and Ismert disclosing state of the art pipe hangers and plug assemblies.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James F. Hook whose telephone number is (703) 308-2913. The examiner can normally be reached on Monday to Wednesday, work at home Thursdays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Mar can be reached on (703) 308-2087. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0861.


James F. Hook
Primary Examiner
Art Unit 3752

JFH